



Public Notice

**U.S. Army Corps
of Engineers**
Honolulu District

Public Notice No.
POH-2006-351

Date:
October 2, 2006

Reply to:
U.S. Army Engineer District, Honolulu
Regulatory Branch, CEPOH-EC-R
Building 230
Fort Shafter, Hawaii 96858-5440

Respond by:
November 16, 2006

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On September 26, 2006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its Nationwide Permits (NWP).

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the District Engineer before commencing the work to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWPs:

The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2006-0005 at www.regulations.gov. Instructions for submitting comments are provided in the September 26, 2006 Federal Register notice. Comments on the proposed NWPs are due by November 27, 2006.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning:

In conjunction with the Federal Register notice, Corps Districts will be announcing proposed regional conditions for these NWPs for public comment. Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure 1) contains the proposed regional conditions currently under consideration by the Pacific Ocean Division for the State of Hawaii, Territory of Guam, Territory of American Samoa, and the Commonwealth of the Northern Mariana Islands. The Honolulu District is seeking comments on the proposed regional conditions and comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of

Hawaii, Territory of Guam, Territory of American Samoa, and the Commonwealth of the Northern Mariana Islands.

Comments on regional issues relating to the proposed NWP and regional conditions are to be sent to the Honolulu District at the letterhead address or to CEPOH-EC-R@usace.army.mil. Comments relating to regional conditions are due by November 16, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other Division or District offices.

When the final NWP is issued, the final regional conditions will be issued at the same time so that the States and Tribes can make their Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWP. After that 60-day period, the NWP and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP, are available for viewing at the Honolulu District, Regulatory Branch Office, Building 214, Ft. Shafter, Hawaii or on the Internet at www.regulations.gov (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWP that are issued. In addition, supplemental decision documents will be issued by Division Engineers to address their determinations concerning regional conditions for the NWP.

Enclosed is an index of the proposed NWP and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP through www.regulations.gov (docket ID number COE-2006-0005), the Corps home page or the Federal Register address listed below. Interested parties who do not have Internet access should contact Ms. Connie Ramsey at (808) 438-2039 for a copy of the proposed NWP and/or regional conditions.

Internet addresses:

Copies of the Federal Register notice and the draft decision documents will also be available at <http://www.regulations.gov> in docket ID number COE-2006-0005.

The Corps home page is: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at <http://www.gpoaccess.gov/fr/index.html>.

Index of Nationwide Permits, Conditions, Further Information, and Definitions

Proposed Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
 - A. Emergency Repair Activities
 - B. Discharges into Ditches and Canals
 - C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs

- D. Commercial Shellfish Aquaculture Activities
- E. Coal Remining Activities
- F. Underground Coal Mining Activities

Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild and Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Waters
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional and Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verifications
26. Compliance Certification
27. Pre-Construction Notification

Proposed Nationwide Permit Definitions

Best management practices (BMPs)	Re-establishment
Compensatory mitigation	Rehabilitation
Currently serviceable	Restoration
Enhancement	Riffle and pool complex
Ephemeral stream	Riparian areas
Establishment (creation)	Single and complete project
Independent utility	Stormwater management
Intermittent stream	Stormwater management facilities
Loss of waters of the United States	Stream bed
Non-tidal wetland	Stream channelization
Open water	Structure
Perennial stream	Tidal wetland
Practicable	Vegetated shallows
Pre-construction notification	Waterbody
Preservation	

Enclosure 1

Honolulu Engineer District Proposed Regional Conditions (2007 Re-issuance of the Nationwide Permits)

REGIONAL CONDITION 1 (Geographical Exclusions)

The following geographic areas and waters of the U.S. are excluded from coverage by the indicated NWP.

1. Anchialine Pools and Montane Bogs (NWPs 7, 12, 14, 18, 39, 40, 41, and 42).
2. Designated Critical Resource Waters and adjacent wetlands (pursuant to General Condition 25), as well as American Heritage Rivers, National Wildlife Refuges, and State Marine Life Conservation Districts (including Marine Preserve Areas in Guam). However, a discharge may be authorized in National Wild and Scenic Rivers if the activity complies with General Condition 7 or in designated critical habitats for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or National Marine Fisheries Service, whichever agency has jurisdiction, has concurred in a determination of compliance with this condition (NWPs 7, 12, 14, 39, 40, and 42).
3. Kihei Wetlands - The area located on Maui between the Mokulele Hwy and Kilohana Drive, extending from the Piilani Highway to the ocean. (NWPs 7, 39, 40, 41, and 42).
4. State of Hawaii (NWP 43 and 44).
5. Commonwealth of the Northern Mariana Islands, Territory of Guam and Territory of American Samoa (NWPs 29, 39, 41, 42, 43, 44).

REGIONAL CONDITION 2 (Notification)

Notification to the District Engineer in accordance with General Condition 13* is required for all discharges of fill into the waters of the U.S. exceeding 1/20 acre under NWPs 3, 4, 5, 6, 12, 13, 14, 16, 18, 19, 22, 25, 27, 31, 33, 36, 38, 39, 40, 41, and 42.

Within the CNMI, Guam and American Samoa, notification to the District Engineer in accordance with General Condition 13 is required for all discharges into the waters of the United States (NWPs 12, 13, 14, 27, 28, 35, 36, 38, and 40). Notification is required for all other NWPs where the loss of waters of the United States for a single and complete project exceeds 1/20 acre.

*Note: For projects directly impacting "Impaired Waters" as identified on the most recent CWA Section 303(d) list for the State of Hawaii, the PCN will identify the waterbody as an Impaired Water and, where practicable, shall identify any mitigating measures or BMPs required/recommended by the State for work in these areas.

REGIONAL CONDITION 3 (Acreage Limitation)

Maximum losses of waters of the U.S. under NWP 7, 40, 41, and 42 in Hawaii are limited to 1/3 acre. Maximum loss of waters of the U.S. under NWP 39 is limited to 1/4 acre. Maximum loss of waters of the U.S. in Guam, American Samoa, and the CNMI for a single and complete project is 1/10 acre (total impact of use of one or more NWP on the same project).

REGIONAL CONDITION 4 (Length Limitation)

The maximum length of fill crossing waters of the U.S. is limited to 200 linear feet under NWP 12, 13, 14, 39 and 42.

REGIONAL CONDITION 5 (Bank Stabilization)

New rigid structures (ex: pre-cast concrete, concrete rubble masonry, or cast-in-place structures) are excluded from use as bank stabilization to protect restoration of storm-damaged uplands under NWP 3 for both tidal and non-tidal waters of the U.S.

REGIONAL CONDITION 6 (Sidecasting)

For NWP 12 and 41, sidecast materials must be removed within 30 days of placement within waters of the U.S. Removal of the sidecast material may be phased in accordance with the progress of the work.

REGIONAL CONDITION 7 (Runways and Taxiways)

Runways and taxiways are excluded from NWP 14 authorization in tidal waters of the U.S.

REGIONAL CONDITION 8 (Stream Modification)

Permanent stream channelization and/or the construction of dams that impound waters of the U.S. may not be conducted under NWP 7, 12, 14, 39, 40, 41, and 42. This condition also applies to NW #18 within the CNMI, Guam and American Samoa.

REGIONAL CONDITION 9 (Compensatory Mitigation)

Upland vegetation buffers cannot be used to offset permanent losses of wetland and aquatic areas authorized under NWP 12, 14, 39, 40, 42, 43 and 44; they cannot be used for this purpose under any of the NWP within the CNMI, Guam and American Samoa. Use of vegetated upland buffers is strongly encouraged, however as part of a compensatory mitigation plan that replaces lost wetland and aquatic areas through restoration, enhancement, creation or under exceptional circumstances, preservation of wetland and aquatic areas shall be at a minimum ratio of 1:1.

REGIONAL CONDITION 10 (Mitigation Measures)

A plan employing the techniques listed below shall be implemented to avoid or minimize disturbance to wetlands, riparian areas and beach fringes and/or to re-establish vegetation in such areas when disturbance cannot be avoided. Areas disturbed during project construction must be revegetated as soon as possible. Erosion protection shall be provided and remain in place until the soil is permanently stabilized.

1) Avoidance and minimization techniques may vary with site conditions and include, but are not limited to, the following:

- *Planning construction access and scheduling work to avoid or minimize damage to wetland vegetation.

- *Using crane matting or suitable geotextile material to protect vegetation from damage by heavy equipment.

2) Revegetation techniques may vary with site conditions and include, but are not limited to the following:

- *Seeding, planting, replacement of reserved ground cover, and/or fertilizing of re-contoured ground to promote re-establishment of natural plant communities. Species to be used for seeding and planting should follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state; 4) non-native non-invasive, species. Note: non-native species should be used only when native species are not available. The following species are known to be highly invasive and may not be used under any circumstances for revegetation under these NWP: 1) species included on the USDA APHIS Plant Protection and Quarantine, Federal Noxious Weed List as of 6/7/99; 2) species included on the Hawaii Department of Agriculture, List of Plant Species Designated as Noxious Weeds for Eradication or Control Purposes (6/18/92); and 3) the University of Hawaii, Department of Botany, Distribution Maps of Alien Plants in Hawaii by island, Hawaiian Ecosystems at Risk (HEAR) Project (1/16/01).

REGIONAL CONDITION 11 (Site Identification)

Project limits of authorized sites shall be clearly identified in the field (e.g., by staking, flagging, silt fencing, buoys, existing footprint for maintenance activities, etc.) prior to clearing and construction to ensure that impacts to waters of the U.S. (including wetlands) beyond project footprints are avoided.

REGIONAL CONDITION 12 (Project Timing)

NWP activities must assure that suspended sediment and turbidity do not affect waters beyond the immediate work area. The work shall be conducted in the dry season or when any affected stream has minimal or no flow, to the extent practicable. The work shall be discontinued during flooding, intense rainfall, storm surge, or high surf conditions where runoff and turbidity cannot be controlled. Shoreline work will be done during low tides as

much as possible. Silt fences, silt curtains, or other diversion or containment structures shall be installed to contain sediment and turbidity at the work site (a) parallel to and within 10 feet of the toe of any fill, or soil exposed within 25 feet of a standing or flowing waterbody, if the fill site has a downslope or surface connection to the waterbody; and (b) adjacent to any fill placed or soil exposed within a standing or flowing waterbody. All silt fences, curtains, and other structures must be installed properly and maintained in a functioning manner for the life of the construction period where fill material and exposed soils might cause transport of sediment or turbidity beyond the immediate construction site.

REGIONAL CONDITION 13 (Endangered Species)

- 1) A survey of the project area should be performed just prior to commencement or resumption of construction activity to ensure that no protected species are in the project area. If protected species are detected, construction activities should be postponed until the animal(s) voluntarily leave the area.
- 2) If any listed species enters the area during conduct of construction activities, all activities should cease until the animal(s) voluntarily depart the area.
- 3) All on-site project personnel should be apprised of the status of any listed species potentially present in the project area and the protections afforded to those species under Federal laws. A brochure explaining the laws and guidelines for listed species in Hawaii, American Samoa, and Guam may be downloaded from http://www.nmfs.noaa.gov/prot_res/MMWatch/hawaii.htm.
- 4) Any incidental take of marine mammals should be reported immediately to NOAA Fisheries' 24-hour hotline at 1-888-256-9840. Information reported must include the name and phone number of a point of contact, location of the incident, and nature of the take and/or injury.

REGIONAL CONDITION 14 (Standard Best Management Practices)

The following measures (as applicable) shall be incorporated into projects to minimize the degradation of water quality and impacts to fish and wildlife resources:

- 1) Turbidity and siltation from project-related work shall be minimized and contained to within the vicinity of the site through the appropriate use of effective silt containment devices and the curtailment of work during adverse tidal and weather conditions.
- 2) Dredging/filling in the marine/aquatic environment shall be scheduled to avoid coral spawning and recruitment periods.
- 3) Dredging and filling in the marine/aquatic environment shall be designed to avoid or minimize the loss special aquatic site habitat (coral reefs, wetlands etc.) and the unavoidable loss of such habitat shall be compensated for.

- 4) All project-related materials and equipment (dredges, barges, backhoes etc) to be placed in the water shall be cleaned of pollutants prior to use.
- 5) No project-related materials (fill, revetment rock, pipe etc.) should be stockpiled in the water (intertidal zones, reef flats, stream channels, wetlands etc.).
- 6) All debris removed from the marine/aquatic environment shall be disposed of at an approved upland or ocean dumping site.
- 7) No contamination (trash or debris disposal, alien species introductions etc.) of adjacent marine/aquatic environments (reef flats, channels, open ocean, stream channels, wetlands etc.) shall result from project-related activities.
- 8) Fueling of project-related vehicles and equipment should take place away from the water and a contingency plan to control petroleum products accidentally spilled during the project shall be developed. Absorbent pads and containment booms shall be stored on-site, if appropriate, to facilitate the clean-up of accidental petroleum releases.
- 9) Any under-layer fills used in the project shall be protected from erosion with stones (or core-loc units) as soon after placement as practicable.
- 10) Any soil exposed near water as part of the project shall be protected from erosion (with plastic sheeting, filter fabric etc.) after exposure and stabilized as soon as practicable (with vegetation matting, hydroseeding etc.).

REGIONAL ADVISORY (Definition of Coral Reefs)

For the geographic area regulated by the Honolulu Engineer District, coral reefs are defined as structures made of and by living coral and other animals and plants (including, but not limited to, their calcareous remains, reef flats, slopes, lagoon bottoms, pinnacles, and other coral reef features). This advisory applies to all NWP.